

U.S. Small Business Administration

SOP 50 10 5(B)
Second Update Highlights
October 14, 2009

Office of Capital Access

Updated SOP 50 10 5(B)

The second update to SOP 50 10(5) has been re-numbered as SOP 50 10 5(B) to differentiate it from the previous version.

Where to find SOP 50 10 5(B)

SBA Website – Gateway to SOPs, FAQs, Center information, and Forms

WWW.SBA.GOV/BANKING

(shortcut to) sba.gov/aboutsba/sbaprograms/elending

Effective Date of SOP 50 10 5(B)

SOP 50 10 5(B) was published on September 3, 2009 with an effective date of October 1, 2009.

This means that the revised policies apply to all applications received by SBA on or after October 1, 2009.

Two Versions Posted

As with SOP 50 10 5(A), SBA has provided two versions of the SOP. The first version shows all changes as “tracked changes” to enable users to more easily identify what has been modified.

The second version is a “clean” copy that incorporates all of the changes.

Notices and Regulation Changes that have been added

The changes identified in SOP 50 10 5(B) incorporate those policy or procedural notices, as well as regulation changes, governing 7(a) and 504 loan processing that were published between January 1, 2009 and June 30, 2009.

Recovery Act

Those Recovery Act initiatives (such as no guaranty fee, a 90 percent guaranty, and the American Recovery Capital (ARC) loan program) that are temporary are not included in the SOP.

Those initiatives that were permanent (exampleexample: allowing the 504 project to include refinancing) have been included.

7(a) Interest Rates – Fixed Rate Change

120.213 defines the fixed interest rates that a lender may charge on SBA-guaranteed loans. It states that “SBA periodically publishes the maximum allowable rate in the Federal Register.”

The maximum fixed rate has been set using the maximum variable interest rate for 7(a) loans.

As stated in this version of the SOP, SBA will be publishing the maximum allowable fixed rate in the Federal Register. The rate will be based on the LIBOR Swap Rate.

- New procedure allows borrower to get benefit of swap market
- LIBOR base rate is “swapped” into a fixed rate and spreads are added to that number.
- Monthly maximum will be based on the rates in effect on the first business day
- Fixed rate for October 2009 are:
 - Up to 7 year, over \$50 K = 8.67%
 - Over 7 year, over \$50K = 9.17%
 - Under \$25K, two points can be added to above rates
 - Between \$25K and \$50K, 1 point can be added

- SBA does permit a fixed rate on the guaranteed portion and a floating rate on the unguaranteed portion.

Change of Ownership Requirements

SOP 50 10 5(B) modifies the section on a 7(a) loan financing a change of ownership that includes intangible assets as follows:

- “Intangible assets” defined as including, but not limited to, goodwill, client/customer lists, patents, trademarks and covenants not to compete.

An SBA-guaranteed loan may be used to finance a change of ownership that includes intangible assets.

A loan that will result in a change of ownership may be processed under delegated authority :

- 1) If the purchase price of the business includes intangible assets (including, but not limited to, goodwill, client/customer lists, patents, copyrights, trademarks and agreements not to compete) of \$500,000 or less or
- 2) If in excess of **\$500,000**, the borrower and/or seller provide an equity injection of at least **25%** of the purchase price of the business.

Seller Equity defined

Seller equity is defined as:

Seller take-back financing that is on full standby (principal and interest) for a minimum of 2 years.

The borrower and seller will agree how much equity each will provide. For example, the borrower and seller may each provide half of the equity or the borrower may provide 15% and the seller may provide 10%.

Change of Ownership Requirements

Non-delegated Authority:

If the loan amount allocated to intangible assets exceeds \$500,000 and the equity contribution from the buyer and the seller combined is less than 25%, the application may not be processed using delegated authority and must be sent to the LGPC.

PLP Applications

Revised the submission for PLP applications:

- Lenders no longer need to provide their latest performance data as OCRM already has that information; and
- Lenders need to provide a copy of their Form 750B agreement (for short term loans) along with Form 750, if applicable.

Post Construction Certification – 7(a)

The language describing SBA's requirements for a post-construction certification by the appraiser that did the pre-construction appraisal has been modified as follows:

7(a) Lender must obtain a statement from the appraiser that the building was built with only minor deviations (if any) from the plans and specifications upon which the original estimate of value was based.

If the appraiser cannot provide such a statement, then the lender may not close the loan without SBA's prior written permission (with an exception for PLP lenders).

State-charter credit union applications

Added clarification of what a state-chartered credit union is required to submit to SBA as part of its application to become a 7(a) participant.

Community Express and T/A providers

Clarified that a Technical Assistance (T/A) provider agreement must describe any fees that the T/A provider will be charging.

Clarified that a T/A provider cannot charge “referral fees” to a lender.

Refinancing Credit Card Debt

Clarified the documentation requirements for credit card debt that will be refinanced with a 7(a) loan. Such debt must have been for business-related purposes.

Credit card in the name of the small business

If the credit card is issued to the small business, the lender may refinance the credit card debt after:

- 1) confirming that the credit card is in the name of the business; and
- 2) the borrower has certified that the credit card debt being refinanced was incurred exclusively for business related purposes.

If the business credit card was also used for personal reasons, the small business must identify which purchases were for personal reasons and that amount must be deducted from the credit card balance before applying for the SBA-guaranteed loan.

If credit card is in the name of the individual

If the credit card is issued to an individual personally, the lender must:

- 1) confirm which of the credit card obligations were used for business-related purposes;
- 2) Lenders must document the specific business purpose of the credit card debt; and
- 3) the borrower must certify that the loan proceeds are being used only for business-related debt.

If credit card is in the name of the individual

Documentation required for refinancing credit card debt includes a copy of the credit card statements and individual receipts for any business expenses in excess of \$100. In all cases, the borrower must certify that the amount that will be refinanced was used exclusively for business expenses.

Refinancing – 10 percent improvement

SOP 50 10 5(A) requires that refinancing demonstrate a 20 percent improvement in cash flow. That has been **reduced to 10 percent** in SOP 50 10 5(B) to correspond to the similar rule for refinancing in the 504 loan program.

Also clarified that this requirement does not apply to revolving lines of credit or long term debt structured with a balloon payment.

Refinancing – Change of Ownership

Clarified the circumstances under which the financing for a change of ownership can be refinanced:

- The lender must obtain a current business valuation that meets SBA's requirements in Chapter 4 of the SOP

Refinancing – Change of Ownership

- If the loan amount allocated in the business valuation to intangible assets exceeds \$500,000 and the borrower does not have at least 25% equity, the application may not be processed using delegated authority and must be sent to the LGPC.
- Refinancing of seller take back financing
 - May not occur sooner than 24 months after the purchase of the business--24 months gives the new owner an opportunity to run the business and file a tax return.
 - Must meet one of the reasons for refinancing identified in subpart B, chapter 2, para. IV.D.
 - A new business valuation is required if the last valuation was done more than 36 months ago and/or does not meet SBA's requirements for a business valuation.
 - The credit write up must contain the same items as a regular refi.
 - No preferences—Example: conventional loan (non-SBA) for real estate and SBA loan for other business assets and W/C.

Increases to 7(a) Loans

- SOP 50 10 5(A) states that requests for increases cannot be submitted to the CLSC if the amount is more than 20 percent of the original approval amount or more than 18 months after the initial loan approval.
- Requests for increases above 20% or beyond 18 months went to HQ for approval.

SOP 50 10 5(B) revised this procedure as follows:

If the request for an increase is more than:

- 20% of the original loan amount or
- 18 months after the original approval date of the loan

The lender must **include with its request to Little Rock or Fresno an analysis** showing that the purpose of the increase is the same as the original purpose of the loan and that the borrower's cash flow can support the increased payment amount. Final decision is in the center.

7(a) Required site visits

Clarified that for 7(a) loans, lenders are to follow their existing policy for site visits required for their non-SBA-guaranteed loans.

Character Determinations

Clarified that lenders must review the character of the operating company as well as the individual owners.

As part of its review, the lender must identify in its credit write-up any federal, state or local citations or probations that might affect the ability of the business to continue operations.

example: The business has been convicted of hiring illegal aliens and is under probation.

Collateral – Marketable Securities

Provided guidance on issues surrounding securing a lien on marketable securities.

For publicly-traded assets, lenders must attempt to obtain a lien on these assets if the loan is not fully secured. If the lender is unable to perfect a lien on these assets, the lender must document its file as to the steps taken to obtain the lien and include any supporting documentation.

IRS Verification

Included a description of a new, expedited service provided by the IRS for business income verification. (Notice 5000-1087):

Under the Income Verification Express Service (IVES) program, the IRS can electronically provide tax return transcript, W-2 transcript and 1099 transcript information generally **within 2 business days** to a third party with the consent of the taxpayer. The transcript information is delivered to a secure mailbox based on information received from a Form 4506-T. A \$4.50 fee is imposed on each transcript requested.

Thank you